

400 KAR 4:125. Wild rivers administration.

RELATES TO: KRS 146.220, 146.270, 146.290, 146.310, 146.350, 224.01-110, 224.10-240, 224.10-440, 224.10-470

STATUTORY AUTHORITY: KRS 146.270, 224.01-110, 224.10-100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.270 authorizes the secretary to promulgate administrative regulations necessary for the preservation and enhancement of wild rivers as established in KRS 146.250 and for control of recreational, educational, scientific, and other uses of these areas in a manner that shall not impair them. KRS 146.220 places emphasis on protecting the aesthetic, scenic, historical, archaeological, ecological, and scientific features of these areas. This administrative regulation establishes provisions for the administration, management and public use of wild river corridors, including criteria for delineating existing, conforming, permitted, and prohibited land uses and conditions of authorization for utility right-of-way construction. This administrative regulation shall apply to all lands and waters under state jurisdiction that are located within designated wild river boundaries as established in 400 KAR 4:100. Nothing herein shall be construed as superseding any requirements of other cabinet programs or of other state or federal agencies.

Section 1. General Policy.

(1) Wild rivers shall be managed to preserve their free-flowing condition and to protect the outstanding and unique aesthetic, scenic, recreational, fish and wildlife, botanical, historical, archaeological, and other natural and cultural features that qualified the streams for designation as wild rivers.

(2) Additional management objectives shall be to afford opportunities to enjoy natural streams and to preserve for future generations the beauty of certain areas untrammelled by man. The office shall not encourage public use of areas where it has been determined that the carrying capacity for one (1) or more uses has been reached or exceeded.

Section 2. Management Plans.

(1) The management of a given wild river corridor shall be according to a management plan developed by the office.

(2) The office shall consult with landowners in the affected wild river corridor, citizen groups, industries, and appropriate local, state, and federal agencies in the preparation of each management plan.

(3) Public participation in the development of a management plan shall be provisioned by at last one (1) public hearing on the draft management plan followed by a thirty (30) day comment period prior to finalizing the plan.

(4)(a) The hearing or hearings, shall be conducted in one (1) of the counties through which the designated portion of the river flows.

(b) Notice of hearing shall be given in accordance with the provisions of KRS Chapter 424. The notice shall:

1. State the time, place, and purpose of the hearing;
2. State the name and address of the person from whom a copy of the proposed management plan may be attained;
3. Be published not less than seven (7) nor more than twenty-one (21) days prior to the hearing;
4. Be published in the county or counties, through which the designated portion of the river flows, and in at least one (1) major newspaper; and
5. Include the address to which written comments on the draft management plan may be

submitted, and the date by which those written comments shall be submitted.

(c) The hearing shall be conducted by a designated representative of the office who shall control the order of presentation.

(d) Any interested person may appear at the hearing and make an oral or written presentation concerning the draft management plan. All oral presentations shall be recorded.

(e) All written and oral comments shall be considered in the development of the management plan.

(5) Responsibility for the administration and management of a wild river shall be clearly delineated in the management plan for that river, and any management agreements between the office and local, state, or federal agencies having overlapping jurisdiction over lands or waters within the wild river corridor shall be incorporated into the plan.

Section 3. Existing or Conforming Land Uses.

(1) Under the provisions of KRS 146.290, land uses that are lawfully existing at the time the boundaries of a wild river are designated may continue even though the use does not conform to the purpose and intent of the Kentucky Wild Rivers Act or the management plan for a given wild river.

(2) Other than existing uses, land uses within wild river corridors that conform to the purposes and intent of the Kentucky Wild Rivers Act and the duly adopted management plan for each wild river shall not require a change of use permit.

(3) Conforming uses shall include wilderness type recreation such as nonmechanized boating, hiking, hunting, fishing, camping, and sightseeing, as well as scientific research, environmental education, and related activities that preserve the primitive character and natural and cultural resources of the area.

(4) Other land uses shall qualify as conforming uses if they do not involve the clearing of more than one-half (1/2) acre of timber, nor constitute a significant visual intrusion within 100 feet of the river. Conforming uses may include:

(a) The routine maintenance, repair, renovation or replacement of existing roads, buildings, or other structures or improvements to an existing use;

(b) The selective cutting of firewood or individual trees by a landowner for personal or family use;

(c) Landscaping and gardening, including flower, fruit, and vegetable production;

(d) Fencing;

(e) The removal of noxious weeds from an area using direct application, but not aerial spraying, of herbicides that are short-term and nontoxic to fish and wildlife and that shall not leach into surface waters or groundwater; and

(f) The clearing of diseased or insect-infested trees from an area greater than one-half (1/2) acre upon written authorization from the office based on the recommendation of a professional forester.

Section 4. Permitted Land Uses.

(1) Land use changes authorized by the office through a change of use permit as required by KRS 146.290, shall comply with all applicable standards established in 400 KAR 4:140.

(2) Land use changes that require a change of use permit shall include:

(a) A resource removal, by methods other than surface mining;

(b) The selective cutting of timber as defined by 400 KAR 1:110; and

(c) A new agricultural use that requires clearing of timber from an area greater than one-half (1/2) acre or more in extent.

Section 5. Prohibited Land Uses. Land uses established in subsections (1) through (3) of this section shall be prohibited.

(1) Pursuant to KRS 146.290, surface mining, timber harvest by methods other than selective cutting, and in-stream disturbances shall be prohibited within a wild river corridor.

(2) Prohibited in-stream disturbances shall include dam construction, dredging, spoil or fill deposition, channel diversion, channelization, and mining of streambed materials.

(3) The construction of roads, buildings, or other structures to effect any use other than an existing or permitted land use, as established in this section or Section 4 of this administrative regulation, shall be prohibited.

Section 6. Public Use.

(1) Public use of wild river corridors shall be limited to the public waters and public lands or interests in lands acquired through lease, easement, or other agreement entered into by the landowner. Public use of private property shall require permission from the landowner. Trespassing shall be subject to penalty as established in KRS 146.990. This section applies to the public use of state-owned lands and public waters within wild river corridors.

(2) The office shall make every effort to inform the public that the wild river designation does not authorize public use of privately owned lands and shall prepare maps delineating the boundaries of public lands within wild river corridors to reduce unintentional trespassing.

(3) In accordance with KRS 146.290, transportation shall be by foot, canoe, kayak, boat, with or without electric motor, or other nonmechanized means except on existing public roads, as required for administrative and resource protection purposes, or as necessary to effect an existing or permitted land use.

(4) The office may condition or deny public access to a wild river if use is causing substantial adverse impact on the scenic, aesthetic, natural, cultural, scientific, or recreational resources, if private property is being damaged, or if user safety is being jeopardized.

(5) Cultural artifacts, relics, fossils, and souvenirs shall not be removed from their site of discovery in a wild river corridor. Deliberate damage to plants, animals, artifacts, or other special features shall be prohibited. A written request shall be submitted to and approved by the office, in accordance with the Research Permit Application, KNP02, incorporated by reference in 400 KAR 2:090, prior to the collection of any natural or cultural materials.

(6) Burying, dumping, or depositing litter, soil, garbage, waste, scrap, or other unsightly or offensive materials other than in receptacles provided for this purpose shall be prohibited.

(7) Horseback riding shall be allowed only on trails specifically designated for this use.

(8) Overnight camping and campfires shall be prohibited within thirty (30) feet of a wild river. An open fire shall not be left unattended, and all fires shall be completely extinguished after use. Live vegetation shall not be cut for firewood.

(9) Camping within a state park shall be in accordance with 304 KAR 1:040.

(10) Hunting, fishing, and trapping shall be subject to state and federal fish and wildlife laws and regulations, and shall comply with the conditions established in paragraphs (a) and (b) of this subsection.

(a) The construction of permanent shelters, lean-tos, or other buildings shall be prohibited. Temporary blinds, stands, or other structures shall be erected in a manner that shall prevent injury to trees.

(b) Trapping shall be prohibited within fifty (50) feet of designated boat access sites, boat portage trails, and other designated public hiking trails, picnic areas, and campgrounds.

(11) Carrying or discharging a firearm, bow and arrow, or explosive substances shall be prohibited for any purpose other than hunting in accordance with state wildlife laws and the other provisions of this administrative regulation.

(12) Swimming and other in-stream recreational uses of a wild river shall be in accordance with Office of Water Patrol safety standards (402 KAR 4:080 and 4:130). Entering a wild river from the shores of a state park for swimming, bathing, or other in-stream recreational use shall be allowed only in areas designated as swimming areas by the Department of Parks.

(13) Conduct that disturbs the peace or causes property damage within a corridor shall be prohibited.

(14) Public users of wild rivers shall be encouraged to leave in passing no mark upon the land that might diminish its value to another, and to make every effort to protect and enhance the unspoiled beauty of these areas as components of Kentucky's unique heritage.

Section 7. Enhancement of Recreational Opportunities.

(1) The development of public access to a wild river shall be compatible with the purposes and intent of KRS 146.200 through 146.360 and the duly adopted management plan for a given river, and shall conform to the natural character of the area.

(2) Development of public access may be used to enhance dispersed, nonmechanized recreational opportunities and provide information on safety, orientation, rules and administrative regulations, and interpretation of special features in the area.

(3) Trails constructed within a wild river corridor shall will be designed and maintained to provide for nonmechanized recreational uses and to prevent soil erosion and compaction, trampling of vegetation, and other damage to the natural beauty and resources of the area.

(4) There shall be no cutting or removal of natural vegetation, living or dead, to create scenic vistas, except as expressly provided by law.

Section 8. Commercial Uses.

(1) The operator of a new commercial service within a wild river corridor shall submit written notification to the office not less than thirty (30) days prior to commencing the use.

(2) The construction of access roads, ramps, wharves or boat docks, buildings, or other facilities required to effect a commercial use shall be located outside of a wild river corridor unless authorized by a change of use permit.

(3) The operator of a commercial service on a wild river shall comply with all applicable provisions of this administrative regulation and shall be responsible for ensuring that the commercial use does not impair or contribute to an adverse impact on the aesthetic, scenic, ecological, scientific, recreational, or other significant features in the corridor as identified in the management plan or by the office, or cause substantial damage to soils, vegetation, fish and wildlife, or water quality.

(4) The office may condition or deny commercial use of a wild river, as established in Section 7(4) of this administrative regulation.

(5) In accordance with 304 KAR 1:030, operation of a commercial activity within a state park shall require prior written consent from the Department of Parks.

(6) Commercial harvest of mussels by any method shall be prohibited in areas where mussel species considered endangered or threatened by the office are known to occur.

Section 9. Scientific Study.

(1) A research permit application shall be submitted to the office for approval prior to the commencement of any scientific study that may affect a wild river corridor conforming to 400 KAR 2:090, Section 18(3)(a).

(2) A final report with results, including data collected in a format supplied by the office, shall be submitted at the conclusion of the research. This data may be incorporated by the office into a research clearinghouse and inventory database, which shall be in accordance with KRS

Section 10. Utility Right-of-way Construction.

(1) As established in KRS 146.290, the construction of a transmission line or pipeline right-of-way within any portion of a wild river corridor shall require written approval from the office prior to the initiation of any construction activities within the wild river boundaries.

(2) Authorization to construct a right-of-way shall require request by the owner of the utility or pipeline company or their engineering representatives, on a written request. The written request shall include a land use plan containing:

(a) A U.S. geological survey topographic map to scale not greater than one (1) inch equal to 500 feet, showing the precise route and dimensions of the right-of-way;

(b) The estimated dates for initiation and completion of construction and the name, address and telephone number of the person or persons in charge of the construction;

(c) A detailed description of the methods of construction and specifications, including profile sheets bearing the seal and signature of a registered professional engineer;

(d) A statement of possible alternate routes for the right-of-way and why the proposed route was selected;

(e) A detailed reclamation plan designed to return the disturbed area as nearly as possible to its former appearance and condition, including the use of native species to revegetate disturbed areas; and

(f) A detailed description of proposed methods for maintaining the right-of-way, including the brand names and methods of application of any herbicides to be used.

(3) Upon receipt of a written request, an inspection of the proposed construction site shall be made by office personnel with the property owner and applicant or their representatives, and personnel from appropriate state and federal agencies.

(4) The office shall notify the applicant as to whether or not the written request is approved or denied within sixty (60) days following receipt of the written request, and shall state the reasons for the decision.

(5) If an application is denied, the applicant may submit a revised application to adequately address the reasons for denial stated in the office's written decision.

(6) A written request shall be approved only if there is no possible alternative route for the right-of-way that would bypass or cause less impact to the wild river corridor, and the applicant agrees to restore all disturbed area within the wild river corridor as nearly as possible to its former appearance and condition, as required by KRS 146.290.

(7) Construction of a right-of-way shall comply with paragraphs (a) through (l) of this subsection.

(a) If feasible, the right-of-way shall be routed to avoid steep slopes, erodible soils, surface waters and areas with high water tables, public recreation areas, and other significant natural or cultural areas identified by the office, and shall be the minimum width necessary for construction and maintenance.

(b) Adequate measures shall be taken to control sediment and any hazardous substances, and to minimize the visual impact of the right-of-way when viewed from the wild river or other designated public use areas.

(c) Any timber cutting required shall be according to the provisions of 400 KAR 4:140, Sections 4 through 7, 9 through 14, and Section 17(10) through (21).

(d) Every effort shall be made to minimize disturbance to the streambed, stream banks and fish and wildlife habitat during construction activities, and to keep timber slash and other debris out of surface waters and the immediate floodplain.

(e) Stream crossings by equipment or vehicles in a wild river corridor shall require the use of

a temporary bridge or other methods approved by the office if evidence is provided that a method is designed so as not to impede stream flow. Construction across surface waters shall occur when local fish and wildlife are not spawning or nesting.

(f) Vehicles and equipment shall be stored outside of the wild river corridor when not in use.

(g) Aerial spraying of herbicides shall not be permitted within the boundaries of a wild river. Direct application of herbicides at ground level shall be limited to brands that are nontoxic to fish and wildlife.

(h) Pipeline relief valves shall be located outside of the wild river corridors.

(i) Primary consideration shall be given to underground placement of transmission lines and pipelines. Overhead transmission lines and towers shall be in accordance with environmental guidelines required by the U.S. Department of Agriculture's Rural Utilities Service, and shall be designed so as to prevent electrocution or other injury to wildlife.

(j) Reclamation shall consist of establishing a permanent vegetative cover on all disturbed surfaces, planting native trees or shrubs where necessary to establish a buffer zone along the banks of the wild river, implementing measures to prevent access by off-road vehicles, and removing all evidence of construction activities.

(k) A performance bond, in an amount to be determined by the office in accordance with KRS 146.290 and 45A.190, shall be required for reclamation if the office determines that the proposed construction could potentially damage, degrade, or otherwise have an adverse impact on any significant feature known to occur within the wild river corridor.

(l) The applicant shall provide written notice to the office upon completion of reclamation, and office personnel shall inspect the construction site to verify compliance with all permit conditions before the bond is released.

Section 11. Road Construction.

(1) In accordance with KRS 146.290, new permanent roads shall not be constructed within a wild river corridor except as authorized by the office to enhance recreational opportunities or to protect soil, water, or other natural resources.

(2) Temporary roads shall be constructed within a wild river corridor only as necessary to effect a use authorized by a change of use permit, and shall be closed and reclaimed immediately after the permitted land use is concluded.

(3) Any construction required to improve, repair, or replace existing state or county-maintained roads or bridges shall require full environmental review by the office and other appropriate state natural resource agencies prior to any construction activity.

(4) During authorized construction activities, heavy equipment shall not be driven through or into a wild river unless every feasible precaution has been taken by the operator to prevent damage to stream-bank vegetation, protect fish and wildlife habitat, control soil erosion, and prevent stream sedimentation.

(5) If recommended by the office, design plans for improving or replacing a bridge across a wild river shall consider provisions for enhancing public access to the river for recreational uses consistent with the provisions of KRS 146.200 through 146.360.

Section 12. Agency Notification.

(1) State or local government agencies that engage in or regulate any activity within the watershed of a wild river shall notify the office prior to the initiation of any activity that could adversely affect the river, and shall provide the office an opportunity to review proposals and plans for the new activity.

(2) A change of land use on state-owned lands within a wild river corridor that does not conform with the purpose and intent of KRS 146.200 through 146.360 shall require that the state

agency that owns the affected land obtain a change of use permit from the office.

Section 13. Fire Control.

(1) State fire control provisions of KRS Chapter 149 and any that may be established by cooperative agreement, shall be strictly enforced.

(2) Fire shall be controlled by methods that require the least disturbance to soils and vegetation, and use of heavy equipment shall be limited to situations where an imminent threat to life or personal property exists. Any fire hazard reduction or replanting after fire shall be coordinated with the office.

Section 14. Signs.

(1) The posting of commercial signs, advertisements, announcements, campaign slogans, or other written messages other than those related to permitted uses shall be prohibited.

(2) As otherwise allowed by law, signs may be installed by the management agency, local government, landowner, or public utility for the purpose of public safety, posting of property boundaries, or property protection, identification of river corridor boundaries and public access points or as otherwise deemed necessary for resource protection, interpretation, or regulatory purposes.

(3) Signs shall be of a design and construction conforming to the natural setting in which they are located and shall not exceed sixteen (16) square feet in size.

(4) Any person with the permission of the landowner may post informational and directional signs within a corridor as necessary to the continuance of an existing use.

Section 15. Enforcement and Hearings.

(1) If the office has reason to believe a violation of 400 KAR Chapter 4 has occurred, a notice of violation shall be issued.

(2) The provisions of KRS 224.10-420 shall apply to any office order or determination made pursuant to the provisions of 400 KAR Chapter 4.

(3) Hearings required to be conducted due to the issuance of a notice of violation issued pursuant to subsection (1) or the filing of a petition pursuant to subsection (2) of this section shall be conducted pursuant to KRS 224.10-440.

(4) Appeals may be taken from any final order of the cabinet pursuant to KRS 224.10-470.

(5) Violations of the provisions of 400 KAR Chapter 4 shall be liable to the civil penalty established in KRS 146.990(1).

(6) Orders for remedial action and recovery of penalties shall be sought pursuant to KRS 146.350. (16 Ky.R. 503; 1336; eff. 11-22-1989; Recodified from 401 KAR 4:125, 12-21-2017; 45 Ky.R. 1791, 2611; eff. 4-5-2019.)